

**STILLWATER COUNTY  
COMMISSIONER MINUTES**

<p><b>Notice:</b> These minutes reflect the proceedings of the Board of County Commissioners. The official minutes are on file with the Clerk and Recorder MCA 7-4-2611(2)(b).</p>
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**REGULAR MEETING  
October 20, 2020**

<b>PRESENT</b>	Commissioner Mark Crago, Chair, Commissioner Dennis Shupak and Tyrel Hamilton, members, Shannon Fisher & Madisyn Hudecek, Administrative Assistants.  Others Present: Carol Arkell, DES; Nancy Rhode, County Attorney; Stephanie Ray, Economic Development; Christine Baker, Web Manager; Forrest Mandeville, Contract Planner; Steve Riveland, Commissioner Elect; Emily Schabacker, Stillwater County News; Citizens – Peggy Ferster, Maureen Davey, Karla Johnson, David Small, Sherrie Ekwortzel, Travis West, Bill Arnold, Myron Gross, Scott Davies, Burt Williams, Fiona Nave.
<b>PLEDGE</b>	Commissioner Crago opened the meeting with the Pledge of Allegiance.
<b>MINUTES</b>	October 6, 2020 - Commissioner Hamilton <b>MOVED</b> to approve the minutes as presented. Commissioner Shupak <b>SECONDED</b> . No discussion. <u>Motion passed unanimously.</u>
<b>CLAIMS</b>	105722 through 105811 in the amount of \$198,022.88 - Commissioner Hamilton <b>MOVED</b> to approve the claims as presented. Commissioner Shupak <b>SECONDED</b> . No discussion. <u>Motion passed unanimously.</u>
<b>ANNOUNCEMENTS</b>	Commissioner Crago announced that COVID-19 is continuing to spread via communal spread. The numbers are continuing to rise and are projected to get worse in the upcoming months during the cold and flu season. Continue to wear masks, practice good handwashing, observe social distancing and if you are sick, stay home. Park City School has closed this week due to a number of staff having COVID-19. Carol Arkell recommended that Stage 1 fire restrictions be lifted as of today and to open the burn permit system today as well. Carol received a response from one fire chief in regard to this and Commissioner Crago stated that he had seen a response from two fire chiefs in regard to lifting of fire restrictions. Commissioner Crago stated that Resolution 2020-41 to lift Stage 1 Fire Restrictions is prepared and can be passed effective October 20, 2020 and will be noted as a file item on next week's agenda. - Commissioner Hamilton <b>MOVED</b> to pass Resolution 2020-41 to rescind Stage 1 Fire Restrictions effective immediately. Commissioner Shupak <b>SECONDED</b> . No discussion. <u>Motion passed unanimously.</u>
<b>FILE ITEMS</b>	<u><b>Sheriff</b></u> A) Quarterly report in the amount of \$800.00 B) Monthly report in the amount of \$250.00  Commissioner Hamilton <b>MOVED</b> to file the file items. Commissioner Shupak <b>SECONDED</b> . No discussion. <u>Motion passed unanimously.</u>
<b>REGULAR BUSINESS</b>	<u><b>Planning</b></u> A) Recommendation to approve Hillbrook Subdivision with conditions - Commissioner Hamilton <b>MOVED</b> to approve Hillbrook Subdivision with conditions. Commissioner Shupak <b>SECONDED</b> . Discussion – Forrest Mandeville read aloud the attached exhibit A and asked if there were questions. Commissioner Crago added that the solid waste fees are

\$185.00 now instead of \$146.00 per unit. Commissioner Crago further stated that this developer has previously developed in this area and has done a nice job and Commissioner Crago does not see any reason why this portion of the subdivision would not be constructed in the same manner. Commissioner Crago commended the planning department for their efforts. Maureen Davey stated that this is a beautiful subdivision and is a favorable addition to the area. Maureen questioned if the subdivision regulations now state that you have to put signs along the ditch for safety purposes and who is responsible for maintaining them, the subdivider or the landowner? Forrest responded that the ditch care is the responsibility of the landowner and the trail care is the responsibility of the property owner's association. Signage along ditches is not a typical requirement, however, due to the depth of the ditch and that it runs the length of the subdivision that it could be a danger. The planning board recommended the signage warning would adequately mitigate the impact. Maureen questioned who comes up with the language on the sign for safety and nobody is held responsible for any harm. Forrest explained that the planning board recommendation is to warn of the open ditch. Maureen went on to ask if that is all it will say because future subdivisions with irrigation ditches going through them will be a hazard but to require a developer or the ditch company to put the signs up could cause a hardship to both sides. Maureen also stated that she is a proponent to irrigation ditches but there has been a lot of issues in the past with irrigation ditches, agriculture and subdivisions. Forrest added that there was a subdivision north of Columbus, approximately 4 to 7 years ago where the county did require the ditch to be fenced in. When there has been a possible finding of danger or interference the planning board has required action or mitigation around ditches before. Motion passed unanimously.

### **Commission**

A) Beartooth Front Citizen Initiated Petition – Commissioner Hamilton **MOVED** to take the Part I Citizen Initiated Zoning Petition under consideration. Commissioner Shupak **SECONDED**. Commissioner Crago reminded the meeting attendees to be respectful of each other opinions, no decisions are being made today and that this is only to take the petition into consideration as the District Court has ruled for the county to do. If this passes today, this will not be the only meeting being held on this topic. Comment will be taken on this motion but today is not the time for debate on the merit of the petition. The Commissioners will move through this process with the guidance of the county attorney. This will be a thoughtful and methodical process which will allow for public participation. Today starts the process. Next week's agenda meeting will lay out how the process will move forward with dates and times of public hearings, comment periods and other relevant information. During these meetings will be the time for comments and debate on the merits of the petition. The floor will not be open for discussion on the motion and please limit your comments to two minutes and direct them to the Commission. When speaking please identify yourself for the record and speak loudly. Discussion – David Smalls stated that he would like the Commissioners to realize before they vote on this is that there is a Supreme Court decision in Montana allowing people to remove their names from a petition at any time. It was done through the Greenpeace Initiative. 560 names were removed from a petition. When the Commissioners are considering the petition, please consider that this might not be a legal petition because if enough names come off of it wouldn't even be a petition. may not be a petition. Karla Johnson asked if someone could explain Judge Wald's reason for allowing the petition to go forward. Commissioner Crago explained that the court's interpretation is that the way the state statute is worded does not speak to the fact that mineral interest owners would be affected under Title 76-2-101. It is his belief that there is a process and this is part of the process. This is still open for the county to make a decision. Judge Wald is not telling the county that the zone will be created and is not telling the county the zone won't be created. Judge Wald is saying that his interpretation of how the law is currently written it doesn't mean that subsurface owners are included signatures in a surface zoning. Judge Wald's decision also mentioned there is still a process to go through and the Commissioner could deny or accept the petition, they could also accept the petition and move forward creating the zone, even if that all happens there is still a process to go through of public hearings and public meetings where people will have the right to protest for or against the petitions. There are still multiple steps for the public to participate in. Commissioner Crago further stated that he believes Judge Wald thinks that the public needs a chance to weigh in on the matter. Karla also asked if the Commissioners have a plan. Commissioner Crago stated that if this is passed today, next week's agenda meeting there will be a scheduled of the how the Commissioner plans to move forward. The goal is to have a schedule that will allow for everyone to voice their opinion for or against the zoning district. There are no specifics at this time. COVID and the technology to make these meetings happen are considerations as well. Next week this will be all laid out so that the Commission is completely transparent on this. Commissioner Hamilton responded to David Smalls comments and explained that the petition has to be accepted as it was presented originally. If someone wanted to change their opinion it

would have to be changed on the public comment portion, they cannot change it on what was originally signed and presented. David Smalls stated that the Supreme Court of Montana has already said that you can remove your name at any given time. This was stopped during the normal process of the petition and no one had a chance to remove their names because they were told they could not do it. The Supreme Court ruled that you can do this and 560 signatures were removed from the Greenpeace papers. When the Commissioners look at this, they need to look at the legalities of this and find out if you have enough signatures to make this a petition if names come off of it because many people filed to have their names removed. Those names should have been taken off by now due to the Supreme Court ruling. This was from the Supreme Court of Montana, not just by some judge. Commissioner Crago stated that he appreciated the comment and if this does move forward today it will be taken under advisement during the Commission's consideration of the petition. Commissioner Crago thanked Mr. Smalls for bringing this to their attention and the Commission will look into it. Fiona Nave stated that she understands the process of the citizen-initiated petition is to go directly to the Commissioners. The planning board dealt with this issue for months, taking comments and reviewing what was proposed. When finished the planning board decided they were not going to recommend the zone to the Commission. How will the Commissioners take into account all of the work that has already been done by the planning board? Commissioner Crago answered that there are two different issues. When the petition was brought to the planning board it was brought in as a government initiated zoning district which is a part II zoning district. This is a citizen initiated zoning district so the processes are mirrored but there are some differences. The planning board's considerations and the meeting minutes will all be taken into consideration. This is a process the Commission will move through because to defend the group that is petitioning, they have waited a long time to be heard and have a place before the Commissioner. On the defense of the County as a whole, the County reserves the right to voice their opinion for or against it. The Commission will not be rushed and it will continue to be worked on. The group who worked on the petition has a right and deserves to be heard, just as everyone else does. There is very little regarding this subject that the Commission does not have knowledge as to what has gone on and been said at public meetings. The Commission is aware of sentiment regarding the petition but there is a process and the Commission will go through the process and will take everything into consideration during the process. Shari Ekwortzel commended the Commissioners for all that they have been through and done during this whole situation with zoning. They have done a wonderful job with the planning board and for the flak the Commission has had to take. Shari stated she is concerned that on the actual petition there are a lot of people who are deceased or who have moved. Shari further stated that there were multiple signatures with LLC's. Shari feels that this should be narrowed down and reviewed as to people who are no longer around and no longer live in this county or are deceased. The names that should be taken off need to be addressed. There are people who were not aware of the full impact of the zoning on the County. Commissioner Crago responded that the Commission understands that but will not debate the merits of the petition today. Commissioner Crago further stated the order from the District Court is the petition as presented in February of 2017 is what the Commission is considering. While the Commission is considering the petition all of those things can be taken into account and that can be a part of the decision-making process. Commissioner Crago thanked Shari for her insight but the merits of the signatures is not the consideration at this time. The consideration is to accept the petition as directed by the District Court. David Smalls stated that he believes that the Commissioners have already made up their mind because they keep saying that they will take this up no matter what and that the Commission had their minds made up before this meeting. Commissioner Crago again stated that if this passes today and he then laid out the process after that point. Commissioner Crago stated that he can guarantee that Commissioner Hamilton and Commissioner Shupak had no idea what he was going to present today. He wrote that last night after consulting with the county attorney and asking if it was okay to read before opening the discussion. David Smalls requested that the Commission consider the signature issues before they vote on taking up the petition because if the signatures are not valid then this would not be an issue and to consider postponing this until a later date so the signature issue can be addressed. Commissioner Crago stated that the judge has deemed this a legal petition. If the Commission does not accept it, it is a moot point and if the Commission does accept it, then they can evaluate whether the signatures are legitimate or not. Burt Williams commented that they had a valid petition before the Commission in 2017, from their point of view. The Commissioners chose to block the processing of the petition because the Commission felt that mineral owners' signatures were also necessary. The petition went to court and the court ruling reverts to 2017 and it was a valid petition at the time and that is what is under consideration today. Maureen Davey stated that she was a Commissioner when the petition was submitted and would like it to be noted that as a Commission and as a County, the petition was not denied. There was a recommendation from the county attorney to the

Clerk & Recorder to deny the petition. The petition did not come to the Commissioners to be denied. Motion passed unanimously

**PUBLIC COMMENTS ON COUNTY BUSINESS** – Maureen Davey commented that she had sent an email to the Commissioners asking why minutes had not been posted on the county website. The Commissioners responded back thank you. There are now more minutes on the website. Maureen referenced the minutes from September 22<sup>nd</sup> and on the agenda under the consent agenda there is the Commission Attorney Fee Agreement. The minutes that were posted show Commissioner Hamilton moved to consent to the consent agenda. Maureen further commented that this is our history and sometimes it will be officially addressed in the future and sometimes it is just for the history. The consent should have been approved. The minutes also show that Commissioner Crago stated that the attorney fee agreement is for the MACO land use attorney Tara Depuy for work on the new fairgrounds project. Maureen stated that working with MACO organization in the past and this puzzled her. Maureen contacted MACO and Tara Depuy is not working for MACO in this official capacity for the fairgrounds project. This looks like the county has an agreement with MACO and it is actually with Tara Depuy. The history is in question here and just for the future the minutes are very important. Maureen urged the Commissioners to look over the minutes for our history and our county for these certain things. Commissioner Crago thanked Maureen for her comments

**With no further comments hear the meeting was adjourned at 9:53 a.m.**

APPROVED BY:     /s/ Mark Crago, Commissioner Chairman

ATTEST:           Heidi L. Stadel, Clerk and Recorder